

STATE OF NEW YORK

326

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. BRAUNSTEIN, PAULIN, SIMOTAS, BARRETT, BENEDETTO, McDONOUGH, MONTESANO, BLANKENBUSH, RAIA, OTIS, FINCH, QUART, ORTIZ, BRABENEC, FRIEND, STIRPE, SCHIMMINGER, GIGLIO, ABBATE, HYNDMAN, SEAWRIGHT, MOSLEY, GOTTFRIED, HEVESI, PERRY, WEPRIN, LAVINE, WOERNER, FERNANDEZ -- Multi-Sponsored by -- M. of A. CROUCH, ENGLEBRIGHT, GALEF, M. L. MILLER, PALMESANO, RODRIGUEZ -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crime of non-consensual dissemination of sexually explicit images

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal law is amended by adding two new sections 250.70 and 250.75 to read as follows:

§ 250.70 Non-consensual dissemination of sexually explicit images.

A person is guilty of non-consensual dissemination of sexually explicit images when he or she knowingly and without consent of the depicted person disseminates a photograph, film, videotape, recording, or any other reproduction of the image of such depicted person whose intimate parts are exposed or who is engaged in an act of sexual contact, when a reasonable person would have known that the person depicted would not have consented to such dissemination, and under circumstances in which the depicted person has a reasonable expectation of privacy. A person who has consented to the capture or possession of an image within the context of a private or confidential relationship retains a reasonable expectation of privacy with regard to dissemination beyond that relationship.

1. For the purposes of this section:

(a) "Intimate parts" means the naked genitals, pubic area, anus, or female post-pubescent nipple of the person.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (b) "Sexual contact" means but is not limited to, masturbation, geni-
2 tal, anal, or oral sex, sexual penetration with objects, or the transfer
3 or transmission of semen upon any part of the depicted person's body.

4 2. This section shall not apply to:

5 (a) lawful and common practices of law enforcement, criminal report-
6 ing, or legal proceedings, or disseminations made in the reporting of
7 unlawful activity;

8 (b) situations involving voluntary exposure in public or commercial
9 settings, or disseminations made for a legitimate public purpose; or

10 (c) providers of an interactive computer service, as defined in 47
11 U.S.C. § 230(f), for images provided by another person.

12 Non-consensual dissemination of sexually explicit images is a class A
13 misdemeanor.

14 § 250.75 Civil cause of action for non-consensual dissemination of sexu-
15 ally explicit images.

16 1. A civil cause of action lies against a person who disseminates,
17 threatens to disseminate an image of another person identifiable from
18 the image itself or information displayed in connection with the image
19 and whose intimate parts are exposed or is engaged in sexual conduct
20 without that other person's consent, if the actor:

21 (a) obtained the image or images under circumstances in which a
22 reasonable person would know or understand that the image was to remain
23 private, including but not limited to images shared within the context
24 of a confidential relationship that were then disseminated beyond such
25 relationship; or

26 (b) knowingly obtained the image or images under false pretenses or
27 without authorization or by exceeding authorized access to property,
28 accounts, messages, files, devices, or resources.

29 2. The following affirmative defense shall apply if:

30 (a) The distributed material was created or distributed under an
31 agreement by the person appearing in the material for its public use and
32 distribution; or

33 (b) The distributed material constitutes a matter of public concern,
34 lawful and common practices of law enforcement, criminal reporting,
35 legal proceedings, medical treatment, or scientific or educational
36 activities; or

37 (c) The distributed material was photographed, filmed, videotaped,
38 recorded, or otherwise reproduced in a public place and under circum-
39 stances in which the person depicted had no reasonable expectation of
40 privacy.

41 3. In addition to other relief available at law, including an order by
42 the court to destroy any image obtained or disseminated in violation of
43 this section, and to preserve discoverable information, and preliminary
44 and permanent injunctive relief, the actor shall be liable to the plain-
45 tiff for:

46 (a) Actual damages, but not less than liquidated damages, to be
47 computed at the rate of one thousand dollars per day for each day the
48 image or images were viewable or each instance a threat to distribute
49 was made or an image fraudulently obtained up to thirty days, or ten
50 thousand dollars, whichever is higher; and

51 (b) Punitive damages; and

52 (c) Reasonable court costs and attorneys' fees.

53 4. In an action brought under this section, all identifying informa-
54 tion about the plaintiff may be redacted from pleadings and court
55 filings and the plaintiff may proceed under pseudonym; the court shall
56 inform the plaintiff of the option to proceed under pseudonym at the

1 earliest possible point and shall maintain the records in a manner that
2 protects the plaintiff's confidentiality.

3 5. The following definitions shall apply: (a) "Personal information"
4 includes, but is not limited to, name or any part thereof, address or
5 any part thereof, age, names of family members, marital status,
6 relationship to defendant, race or ethnic background, employer, school,
7 or URLs, social media account usernames, and screenshots related to the
8 cause of action;

9 (b) "Actual damages" includes, but is not limited to, pain and suffer-
10 ing, emotional distress, economic damages, and lost earnings.

11 6. A cause of action brought under this section may be brought no more
12 than five years after the last dissemination or incident.

13 7. The actor's claim that the depicted person is a public figure shall
14 not be sufficient to establish the affirmative defense that distribution
15 constitutes a matter of public concern.

16 8. Nothing in this section shall be construed to require that a crimi-
17 nal charge be brought or a criminal conviction be obtained as a condi-
18 tion of bringing a civil cause of action or receiving a civil judgment
19 pursuant to this section or be construed to require that any of the
20 rules governing a criminal proceeding be applicable to any such civil
21 action.

22 9. This section shall not apply to providers of an interactive comput-
23 er service, as defined in 47 U.S.C. § 230(f), for images provided by
24 another person.

25 § 2. This act shall take effect on the first of November next succeed-
26 ing the date on which it shall have become a law.